



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2682
www.raleighnc.gov

Case File: A-119-17

Property Address: 2801 Wakefield Pines Drive

Property Owner: CK Wakefield Properties, LLC

Project Contact: Michael Birch

Nature of Case: A request for a complete variance to the 40% forestation standard set forth in Section 9.1.9. of the Unified Development Ordinance as well as a complete variance to the primary tree conservation requirement for an undisturbed area adjoining a thoroughfare set forth in Section 9.1.4.A.8. of the Unified Development Ordinance as applied to the property's frontage along Falls of Neuse Road and Wakefield Pines Drive on a 4.93 acre parcel zoned Commercial Mixed Use -3-Urban Watershed Protection Overlay District and located at 2801 Wakefield Pines Drive .



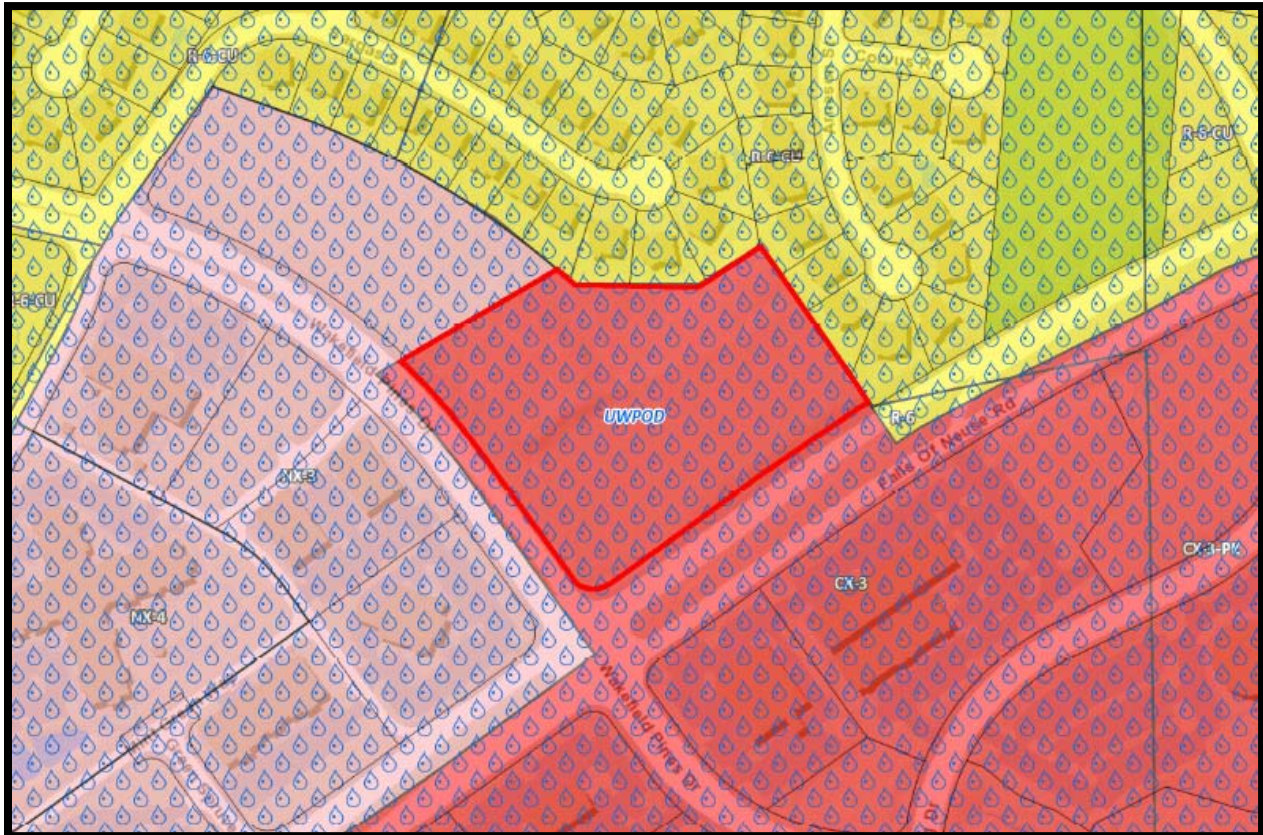
2801 Wakefield Pines Drive

To BOA: 9-11-17

Staff Coordinator: Eric S. Hodge, AICP

ZONING

DISTRICTS: Commercial Mixed-Use-3 and Urban Watershed Protection Overlay District



2801 Wakefield Pines Drive

VARIANCE STANDARDS: In accordance with UDO [§10.2.10 Variance](#), before a variance request is granted, the Board of Adjustment shall show all of the following:

To Legalize the Existing Structure:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from

personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**
- 4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.**

Sec. 9.1.9 Watershed Protection Overlay Districts

A. Except as otherwise provided below, every lot located within a -UWPOD, -FWPOD or -SWPOD must provide and maintain an area set aside for trees equal to at least 40% of the lot area. Within this area, trees must either be preserved or planted in accordance with the following:

1. Tree areas may be 1 contiguous area or scattered areas throughout the lot, but no required tree area may be less than 1/5 of the total gross land area required to be set aside for trees;
2. All areas required to be set aside for trees shall be maintained as wooded areas;
3. Wooded areas may consist of either areas where active tree preservation is observed or tree planting areas;
4. Each active tree preservation area must contain a minimum of 2 inches of tree caliper per every 100 square feet and within such areas, active tree preservation shall be followed;
5. Areas that are set aside for trees that do not meet the standards for active tree protection areas must be planted with shade trees; and
6. The minimum size and planting rate of new tree plantings used to fulfill this requirement shall be either 1 bare-root seedling at least 14 inches tall planted per 100 square feet (10 feet by 10 feet centers) or one 2-inch caliper tree planted per 200 square feet.

B. After wooded areas have been determined and prior to or concurrent to any subdividing of the property or issuance of building permit, the landowner shall record with the local County Register of Deeds a plat with metes and bounds descriptions of all wooded areas.

C. For lots located within areas designated "New Urban" by the Swift Creek Land Management Plan, the regulations of Sec. 9.1.9.A. above apply with the exception that only 25% of each lot must contain an area set aside for trees.

D. For lots located within a conservation development, areas set aside for trees may in lieu of being situated on the individual dwelling lots may instead be located within the required open space, provided that the overall acreage set aside for trees is not diminished.

E. The requirements of this section do not apply to lots devoted exclusively to stormwater control measures or to those lots located in those areas of the Comprehensive Plan designated for impervious surfaces in excess of 30%.

Article 9.1. Tree Conservation

Sec. 9.1.1. Intent

The intent of the tree conservation regulations is to preserve tree coverage, mature trees and natural resource buffers, and lessen the impact of development on the surrounding properties. The most significant trees, greater basal area tree stands and healthy trees in the most appropriate locations, should be considered when granting an alternate.

Sec. 9.1.2. Applicability

Prior to approval of any subdivision of any tract 2 acres or greater in size or site plan for a parcel 2 acres or greater, tree conservation areas must be provided in accordance with the requirements of this UDO, provided that delineation of tree conservation areas for a site subject to either condemnation or the threat of condemnation shall be delayed until a site plan or further subdivision of the parcel first occurs.

Sec. 9.1.3. Tree Conservation Required

A. Tree Conservation

1. Tree conservation area requirements by district are set forth below. The eligibility for tree conservation is based on the gross site area. The amount of conservation area required is calculated as a percentage of the net site area.

District

Conservation Area

Required (min)

R-1, R-2 15%

All other districts 10%

2. Any eligible tree conservation priority in conflict with a build-to requirement is not required to be protected.

Sec. 9.1.4. Tree Conservation Area Allocation

A. Primary Tree Conservation Areas

The following are primary tree conservation areas and must be the first areas saved to meet the tree conservation requirement. All primary tree conservation areas on the site must be established even if doing so exceeds the minimum required percentage.

1. -SHOD-1 and -SHOD-2 protective yards (see Sec. 5.3.1.).
2. Parkway Frontage protective yards (see Sec. 3.4.3.)
3. CM primary tree conservation areas (see *Article 4.2. Conservation Management (CM)*).
4. -MPOD protective yards (see Sec. 5.2.2.).
5. A healthy, champion tree and its critical root zone.

6. Zone 2 of Neuse River Riparian Buffers, as established in title 15A of the North Carolina Administrative Code Subarticle 2B Section .0233.

7. Areas with a gradient of 45% or greater that are adjacent to or within floodways.

8. An undisturbed area adjoining a Thoroughfare varying in width between 0 and 100 feet; provided that the total undisturbed area is equal to an area measured 50 feet perpendicular to the Thoroughfare.

B. Secondary Tree Conservation Areas

1. The following secondary tree conservation areas, listed in priority order from highest to lowest, must be included once the primary tree conservation areas are exhausted.

a. A minimum 65-foot wide perimeter buffer when the adjoining or adjacent property is not a Thoroughfare or is not vacant.

b. A minimum 32-foot wide perimeter buffer when the adjoining or adjacent property is vacant.

c. The critical root zone of any tree 10 inches or greater in DBH that is located within 50 feet of a Thoroughfare or within 65 feet of any nonvacant property boundary or roadway that is not a Thoroughfare.

d. The critical root zone of any tree 10 inches or greater in DBH that is located within 32 feet of a vacant property boundary.

2. Secondary tree conservation areas described in h. through Sec. 9.1.4.B.1.b. above must be at least 32 feet in all directions and be a minimum of 4,000 square feet in area, excluding external boundaries.

3. The critical root zone of a saved tree in Sec. 9.1.4.B.1.c. or Sec. 9.1.4.B.1.d. above must be preserved in entirety even if it extends beyond 65 feet or 32 feet. When a landscape easement is obtained from the adjoining land that prohibits all tree disturbing activity, off-site areas for protected critical root zones may be included as tree conservation areas provided that such areas are not under any circumstances to be counted as tree conservation area on both properties.

4. As an alternative to Sec. 9.1.4.B.1.a. and Sec. 9.1.4.B.1.b. above, secondary tree conservation areas of undisturbed areas are allowed elsewhere on the site provided that the square footage of the substituted areas is at least 4,000 square feet. No portion of Zone 1 of Neuse River Riparian Buffers as established in Title 15A of the North Carolina Administrative Code, Subarticle 2B Section .0233, shall be designated an alternate undisturbed area.

5. As an alternate means of compliance with Sec. 9.1.4.B.1.c. or Sec. 9.1.4.B.1.d. above, secondary tree conservation areas of individual trees 10 inches or greater in DBH and their critical root zones are allowed anywhere on the site that is not otherwise tree conservation area provided that the critical root zone area in the alternate locations is not less than the critical root zone area that would have been required for priorities in Sec. 9.1.4.B.1.c. or Sec. 9.1.4.B.1.d. above and that no alternate saved tree is less than 10 inches in DBH.

C. Excluded Areas

Tree conservation areas must exclude the following.

1. Sight triangles.
 2. Slope easements.
 3. Drainage easements.
 4. Cross access easements.
 5. Governmental and utility easements that prohibit trees.
 6. Any easement that authorizes tree disturbing activities.
7. Any area devoted or to be devoted to streets, future right-of-way reservation, sidewalks, driveways, walkways, storm drainage facilities, including without limitation, pipes, energy dissipaters and stormwater control measures which require the removal of vegetation.
8. Water-related activity areas located in, over, under or adjacent to a lake or natural watercourse shown on the site plan may not be included as Zone 2 areas of Neuse River Riparian Buffers.
9. Any tree 10 inches DBH and larger that has 30% or more of its critical root zone traversed in part or in entirety by any of the excluded areas in Sec. 9.1.4.C.1. through Sec. 9.1.4.C.7. above, by impervious surface or by any adjacent property.

D. General Conservation Area Requirements

1. Size

The minimum dimension of a primary tree conservation area is 20 feet, measured in all directions.

2. Greenways

a. City of Raleigh greenways may be included as tree conservation areas, provided that an area of 25 feet multiplied by the length of the greenway is excluded as tree conservation for trail construction.

b. Greenways can only be established as tree conservation areas after establishment of primary tree conservation areas.

3. Tree Quality

No tree may be used to meet the requirements of this Article if it is unhealthy or a hazardous tree.

4. Heritage Trees

A heritage tree and its critical root zone may be established as an optional tree conservation area after establishment of primary tree conservation areas. The area of critical root zone for a heritage tree conservation area shall be double credited toward the tree conservation requirement only when all of the following conditions are met.

a. The critical root zone shall be protected in entirety by, either being entirely on the developing property or the property owner shall obtain a landscape easement that prohibits all tree disturbing activity for the portion of the critical root zone on an adjacent property. The off-site area for protected critical root zone may be included as tree conservation area provided that such area shall not under any circumstances be counted as tree conservation area on both properties.

b. Any portion of the critical root zone within another tree conservation area shall not be eligible for double credit.

c. The condition of the heritage tree shall be a rating of "Good" or higher as determined by an arborist certified by the International Society of Arboriculture using the Guide for Plant Appraisal, latest edition, published by the International Society of Arboriculture and verified by the Planning and Development Officer.

d. A report of the tree condition shall be prepared on an evaluation form provided by the City and it shall be provided to the Planning and Development Officer.

e. An active tree preservation plan prepared by an arborist, certified by the International Society of Arboriculture, must be approved by the Planning and Development Officer and implemented by the developer under the supervision of the certified arborist.

E. Tree Cover Required

1. Tree conservation areas proposed for -SHOD-1, -SHOD-2, Parkway Frontage, and undisturbed areas adjoining a Major or Minor Thoroughfare protective yard (Sec. 9.1.4.A.1., Sec. 9.1.4.A.2. and Sec. 9.1.4.A.8.) and secondary priority areas (Sec. 9.1.4.B.1.a. and Sec. 9.1.4.B.1.b.) and their alternates, must contain a basal area of at least 30 square feet per acre as measured in increments of 50 lineal feet.

2. Any required protective yard for a -SHOD 1, -SHOD-2 or Parkway Frontage that does not contain a basal area of at least 30 square feet shall be planted in accordance with the overlay district landscaping standards and portions of the protective yard cannot be established as a tree conservation area.

3. For those developments that fulfill any of their tree conservation area requirement using a -SHOD-1, -SHOD-2, Parkway Frontage or undisturbed areas adjoining a Major or Minor Thoroughfare protective yard or with secondary tree conservation areas from Sec. 9.1.4.B.1.a. or Sec. 9.1.4.B.1.b. and their alternates, the following must be submitted:

a. Photo panoramic panels of the intended area to be conserved. The photo panel shall equal 50 feet of the length of the tree conservation area to be saved;

b. A tree cover report prepared by a North Carolina registered forester or North Carolina licensed landscape architect or Certified Arborist that, inventories each 50-foot length of proposed tree conservation area, to identify all eligible trees 3 inches DBH and larger, by species, DBH, with basal area calculations and a determination of the general health of the tree stand; and

c. The most recent aerial photograph of the subject tract.

4. A survey of all eligible trees and computation of basal area may be substituted in lieu of Sec. 9.1.4.E.3.a. and Sec. 9.1.4.E.3.c. above, provided that no dead, unhealthy or hazardous tree is included in the survey.

5. An optional method to determine basal area for tree conservation areas is allowed when a North Carolina registered forester certifies in writing that the basal area is 60 square feet per acre or greater, provided all the following conditions are met:

a. The contiguous tree conservation area that can consist of primary and

secondary is at least 8,700 square feet in size, excluding easements and consists of undisturbed wooded areas with a basal area of 60 square feet per acre or greater comprised of trees 3 inches DBH and larger;

b. All dimensions of tree conservation areas are at least 65 feet in all directions;

c. Land area that does not contain trees must be excluded unless it contains critical root zones of trees being preserved;

d. Any area of tree disturbing activity is excluded as a tree conservation area; and

e. A legible copy of the latest Wake County/City of Raleigh aerial photograph must be included with the registered forester's certification.

6. Within each 50-foot linear increment of Zone 2 of Neuse River Riparian Buffers, MPOD natural resource buffer yards or greenway tree conservation areas that do not contain trees, a minimum of 2 shade trees to enhance the riparian buffer must be planted prior to issuance of a certificate of occupancy. Planted shade trees must be at least 10 gallon container size and free of circling roots at time of planting. If the area without trees will be used as shown on the approved site plan for either a tree disturbing activity allowed by Sec. 9.1.6. or a water-related activity located in, over, under or adjacent a lake or natural watercourse, no planting of new trees shall be required.

7. Within each 50 linear feet of watercourse buffer of the -MPOD that does not contain trees, a minimum of two 10 gallon container size shade trees, free of circling roots, must be planted to enhance the riparian buffer prior to the issuance of a certificate of occupancy.

8. Alternatively, areas that do not contain trees in Neuse Zone 2, greenways or -MPOD watercourse buffers may be established as permanently undisturbed primary tree conservation areas to allow natural regeneration of trees, provided such areas are not located on individual lots developed for single-unit living. Permanently undisturbed primary tree conservation areas shall not be cleared of any vegetation or subjected to any tree disturbing activity and shall be delineated with signs as specified by the City. Required signs must remain in place for a period of 7 years. Unlawful disturbance of any permanently undisturbed primary tree conservation area shall subject the violator to a civil penalty of a minimum of \$1,000 plus 35 cents for every square foot of disturbed area and unlawfully disturbed areas shall be planted with twice the number of 10 gallon container shade trees as described above. Unlawful removal of any required signs shall subject the violator to a civil penalty of \$100 for each removed sign and each removed sign shall be replaced. Civil penalties shall be processed as set forth in Sec. 10.4.2.

Application for Variance



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Submit application to: Development Services Customer Service Center, 1 Exchange Plaza, Suite 400, Raleigh, NC 27601

NATURE OF REQUEST	OFFICE USE ONLY
Nature of variance request (if more space is needed, submit addendum on separate sheet): See attached Exhibit A	Transaction Number A-119-17
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions, or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number.	

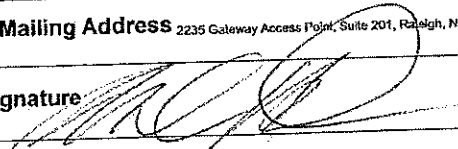
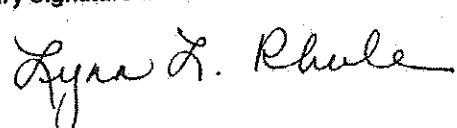
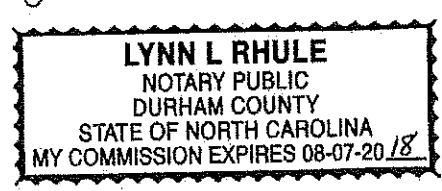
GENERAL INFORMATION			
Property Address 2801 Wakefield Pines Drive		Date 9/8/17	
Property PIN 1739-08-4787		Current Zoning CX-3-UWPOD	
Nearest Intersection Falls of Neuse Road & Wakefield Pines Drive		Property size (in acres) 4.93 acres	
Property Owner CK Wakefield Properties, LLC		Phone 919-868-4472	Fax
Owner's Mailing Address 111 E. Hargett Street, Suite 300, Raleigh, NC 27601		Email mukcommercial@gmail.com	
Project Contact Person Michael Birch, Attorney		Phone 919.645.4317	Fax
Contact Person's Mailing Address 2235 Gateway Access Point, Suite 201, Raleigh, NC 27607		Email mbirch@morrisrussell.com	
Property Owner Signature 		Email mukcommercial@gmail.com	
Notary Sworn and subscribed before me this 8th day of September, 2017		Notary Signature and Seal  	

Exhibit A

1. Property owner requests a complete variance to the 40% forestation standard set forth in UDO section 9.1.9. for property located in the Urban Watershed Protection Overlay District.
2. Property owner requests a complete variance to the primary tree conservation requirement for an undisturbed area adjoining a thoroughfare set forth in UDO section 9.1.4.A.8. as applied to the property's frontage along Falls of Neuse Road and Wakefield Pines Drive.

1739084787
CK WAKEFIELD PROPERTIES LLC
111 E HARGETT ST STE 300
RALEIGH NC 27601-1482

1729988780
CK WAKEFIELD PROPERTIES LLC
111 E HARGETT ST STE 300
RALEIGH NC 27601-1482

1739080507
WAKEFIELD CROSSINGS PROF CNTR
CONDO
203 E WHITAKER MILL RD STE 109
RALEIGH NC 27608-2574

1739080507
MAGNO PROPERTIES LLC
2800 WAKEFIELD PINES DR STE 100
RALEIGH NC 27614-8597

1739080507
GERDTS DENTAL PROPERTIES LLC
2800 WAKEFIELD PINES DR STE 110
RALEIGH NC 27614-8597

1739080507
SHD 2810 LLC
2810 WAKEFIELD PINES DR STE 100
RALEIGH NC 27614-7078

1739080507
LE PROPERTIES AT WAKEFIELD LLC
2810 WAKEFIELD PINES DR STE 115
RALEIGH NC 27614-7078

1739080507
LE PROPERTIES AT WAKEFIELD LLC
2810 WAKEFIELD PINES DR STE 115
RALEIGH NC 27614-7078

1739081430
THE FIVE & NINE CORP
TURF COMPANY
16 COURT ST STE 2007
BROOKLYN NY 11241-1020

1739085919
PRAKASH, SHAILENDRA KUMAR
2804 NEW HOPE CHURCH RD
RALEIGH NC 27604-3424

1739087898
KOSEK, JOSEPH S KOSEK, KELLY A
12205 ARNESON ST
RALEIGH NC 27614-6962

1739087966
WILLIAMS, BRIAN WILLIAMS, JANICE
12209 ARNESON ST
RALEIGH NC 27614-6962

1739088865
TONG, DIEP N MILLER, DIANA TONG
12201 ARNESON ST
RALEIGH NC 27614-6962

1739090003
WAKEFIELD SPRING HOUSING
ASSOCIATES LLC
7706 SIX FORKS RD STE 202
RALEIGH NC 27615-5067

1739092098
BAUER, SCOTT C BAUER, BROOKE H
16019 PORT BARROW DR
CYPRESS TX 77429-8206

1739093043
HALL, LARRY HALL, BARBARA JEAN
13124 SARGAS ST
RALEIGH NC 27614-6933

1739094020
EATON, FELITA L EATON, FRANK JR
13128 SARGAS ST
RALEIGH NC 27614-6933

1739095181
LANGHEIM, GREGORY F LANGHEIM,
CAROLE DUGGAN
13133 SARGAS ST
RALEIGH NC 27614-6934

1739096002
MERCK, AUSTIN B MERCK, TERESSA F
13136 SARGAS ST
RALEIGH NC 27614-6933

1739097022
BEGIN, MARC P BEGIN, MICHELLE
12213 ARNESON ST
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1739097100
PENNY, TIMOTHY PENNY, DEBORAH L
12217 ARNESON ST
RALEIGH NC 27614-6962